



General Assembly

February Session, 2010

Amendment

LCO No. 4990

SB0048904990SD0

Offered by:

SEN. LOONEY, 11th Dist.

SEN. MCDONALD, 27th Dist.

To: Senate Bill No. 489

File No. 582

Cal. No. 404

**"AN ACT CONCERNING UNINSURED AND UNDERINSURED
MOTORIST COVERAGE FOR BODILY INJURY TO A NAMED
INSURED OR RELATIVE."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Subsection (a) of section 31-293 of the general statutes is
4 repealed and the following is substituted in lieu thereof (*Effective*
5 *October 1, 2010*):

6 (a) When any injury for which compensation is payable under the
7 provisions of this chapter has been sustained under circumstances
8 creating in a person other than an employer who has complied with
9 the requirements of subsection (b) of section 31-284, a legal liability to
10 pay damages for the injury, the injured employee may claim
11 compensation under the provisions of this chapter, but the payment or
12 award of compensation shall not affect the claim or right of action of
13 the injured employee against such person, but the injured employee

14 may proceed at law against such person to recover damages for the
15 injury; and any employer or the custodian of the Second Injury Fund,
16 having paid, or having become obligated to pay, compensation under
17 the provisions of this chapter may bring an action against such person
18 to recover any amount that he has paid or has become obligated to pay
19 as compensation to the injured employee. If the employee, the
20 employer or the custodian of the Second Injury Fund brings an action
21 against such person, he shall immediately notify the others, in writing,
22 by personal presentation or by registered or certified mail, of the action
23 and of the name of the court to which the writ is returnable, and the
24 others may join as parties plaintiff in the action within thirty days after
25 such notification, and, if the others fail to join as parties plaintiff, their
26 right of action against such person shall abate. In any case in which an
27 employee brings an action against a party other than an employer who
28 failed to comply with the requirements of subsection (b) of section 31-
29 284, in accordance with the provisions of this section, and the
30 employer is a party defendant in the action, the employer may join as a
31 party plaintiff in the action. The bringing of any action against an
32 employer shall not constitute notice to the employer within the
33 meaning of this section. If the employer and the employee join as
34 parties plaintiff in the action and any damages are recovered, the
35 damages shall be so apportioned that the claim of the employer, as
36 defined in this section, shall take precedence over that of the injured
37 employee in the proceeds of the recovery, after the deduction of
38 reasonable and necessary expenditures, including attorneys' fees,
39 incurred by the employee in effecting the recovery. If the action has
40 been brought by the employee, the claim of the employer shall be
41 reduced by one-third of the amount of the benefits to be reimbursed to
42 the employer, unless otherwise agreed upon by the parties, which
43 reduction shall inure solely to the benefit of the employee, except that
44 such reduction shall not apply if the reimbursement is to the state of
45 Connecticut or a political subdivision of the state including a local
46 public agency, as the employer, or the custodian of the Second Injury
47 Fund. The rendition of a judgment in favor of the employee or the
48 employer against the party shall not terminate the employer's

49 obligation to make further compensation which the commissioner
50 thereafter deems payable to the injured employee. If the damages, after
51 deducting the employee's expenses as provided in this subsection, are
52 more than sufficient to reimburse the employer, damages shall be
53 assessed in his favor in a sum sufficient to reimburse him for his claim,
54 and the excess shall be assessed in favor of the injured employee. No
55 compromise with the person by either the employer or the employee
56 shall be binding upon or affect the rights of the other, unless assented
57 to by him. For the purposes of this section, the claim of the employer
58 shall consist of (1) the amount of any compensation which he has paid
59 on account of the injury which is the subject of the suit, and (2) an
60 amount equal to the present worth of any probable future payments
61 which he has by award become obligated to pay on account of the
62 injury. The word "compensation", as used in this section, shall be
63 construed to include incapacity payments to an injured employee,
64 payments to the dependents of a deceased employee, sums paid out
65 for surgical, medical and hospital services to an injured employee, the
66 burial fee provided by subdivision (1) of subsection (a) of section 31-
67 306, payments made under the provisions of sections 31-312 and 31-
68 313, and payments made under the provisions of section 31-284b in the
69 case of an action brought under this section by the employer or an
70 action brought under this section by the employee in which the
71 employee has alleged and been awarded such payments as damages.
72 Each employee who brings an action against a party in accordance
73 with the provisions of this subsection shall include in his complaint (A)
74 the amount of any compensation paid by the employer or the Second
75 Injury Fund on account of the injury which is the subject of the suit,
76 and (B) the amount equal to the present worth of any probable future
77 payments which the employer or the Second Injury Fund has, by
78 award, become obligated to pay on account of the injury.
79 Notwithstanding the provisions of this subsection, when any injury for
80 which compensation is payable under the provisions of this chapter
81 has been sustained under circumstances creating in a person other
82 than an employer who has complied with the requirements of
83 subsection (b) of section 31-284, a legal liability to pay damages for the

84 injury and the injured employee has received compensation for the
85 injury from such employer, its workers' compensation insurance
86 carrier or the Second Injury Fund pursuant to the provisions of this
87 chapter, the employer, insurance carrier or Second Injury Fund shall
88 have a lien upon any judgment received by the employee against the
89 party or any settlement received by the employee from the party,
90 provided the employer, insurance carrier or Second Injury Fund shall
91 give written notice of the lien to the party prior to such judgment or
92 settlement."